

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

VERNON P MORROW  
103 MARIETTA ST  
BURLINGTON IA 52601-4229

SCHILLI LEASING INC  
6358 W US HWY 24  
REMINGTON IN 47977

Appeal Number: 06A-UI-04298-CT  
OC: 03/26/06 R: 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Schilli Leasing, Inc. filed an appeal from a representative's decision dated April 12, 2006, reference 01, which held that no disqualification would be imposed regarding Vernon Morrow's separation from employment. After due notice was issued, a hearing was held by telephone on May 8, 2006. Mr. Morrow participated personally. The employer participated by Dave Stewart, Shop Manager, and Ed Claxton, Maintenance Director.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Morrow was employed by Schilli Leasing, Inc. from March 27, 1995 until March 27, 2006 as a full-time mechanic. He worked the third shift from 11:00 p.m. until 7:30 a.m. He was discharged after he was observed sleeping on the job at approximately 4:30 a.m. on March 25. He was not on a scheduled break at the time. Mr. Morrow was aware that sleeping on the job was against the employer's policies.

Mr. Morrow's assigned work was completed when he went to the break room and went to sleep on March 25. There was other work he could have done. He did not ask a supervisor for additional work and did not seek additional work on his own. Mr. Morrow suffers from sleep apnea and knew that if he sat down he might fall asleep. He had been warned in July of 2005, after he failed to perform adequate trailer inspections, that he would be discharged if there were any further disciplinary issues.

Mr. Morrow has received a total of \$1,620.00 in job insurance benefits since filing his claim effective March 26, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Morrow was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Morrow was discharged for sleeping on the job in violation of a known work rule. He may well suffer from sleep apnea. However, he placed himself in a situation where he knew that, more likely than not, he might fall asleep. He went to the break room when he was not on a scheduled break and sat down. Given his condition, he knew or should have known that he might fall asleep. If he had continued working as expected by the employer, it seems unlikely he would have fallen asleep at work. It was not the apnea itself that caused him to violate policy; it was his failure to keep busy while on the clock.

Sleeping on the job is clearly contrary to the standards expected by the employer. It results in the employer paying an individual for time not spent actually working for the employer. Although this was the sole reason for the discharge, Mr. Morrow was on notice that he would be discharged if there were further infractions of the employer's policies. After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied.

Mr. Morrow has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 12, 2006, reference 01, is hereby reversed. Mr. Morrow was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Morrow has been overpaid \$1,620.00 in job insurance benefits.

cfc/pjs